

## NORTH CAROLINA FIFTH DEED OF TRUST

SATISFACTION: The debt secured by the within Deed of Trust together with the note(s) secured thereby has been satisfied in full.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Signed: \_\_\_\_\_

Parcel Identifier No. \_\_\_\_\_ Verified by \_\_\_\_\_ County on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
By: \_\_\_\_\_

Mail/Box to: Beneficiary, Attn: Director, Department of Community Development, City of Durham

This instrument was prepared by: \_\_\_\_\_

Brief description for the Index: \_\_\_\_\_, Durham, NC

THIS DEED of TRUST made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between:

GRANTOR	TRUSTEE	BENEFICIARY
Southside Revitalization Phase I, LP, a Missouri limited partnership	Thomas J. Bonfield, City Manager	City of Durham 101 City Hall Plaza Durham, NC 27701

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, That whereas the Grantor is indebted to the Beneficiary in the principal sum of Eight Hundred Thousand and No/100 Dollars (\$800,000.00), as evidenced by a Fifth Deed of Trust Promissory Note dated \_\_\_\_\_, 2012, the terms of which are incorporated herein by reference. The final due date for payments of said Fifth Deed of Trust Promissory Note, if not sooner paid, is September 30, 2059.

NOW, THEREFORE, as security for said indebtedness, advancements and other sums expended by Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys fees as provided in the Promissory Note) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor has bargained, sold, given and conveyed and does by these presents bargain, sell, give, grant and convey to said Trustee, his heirs, or successors, and assigns, the parcel(s) of land situated in the City of \_\_\_\_\_ Durham \_\_\_\_\_, \_\_\_\_\_ City-In \_\_\_\_\_ Township, \_\_\_\_\_ Durham \_\_\_\_\_ County, North Carolina, (the "Premises") and more particularly described as follows:

The land and all buildings and improvements now or hereafter located on the Premises known as Lot #1, consisting of 5.568 acres and Lot #2, consisting of 0.744 acres, identified on Preliminary map for Rolling Hills Phase One as revised on March 14, 2012, and being further Described in Exhibit "A", attached.

TO HAVE AND TO HOLD said Premises with all privileges and appurtenances thereunto belonging, to said Trustee, his heirs, successors, and assigns forever, upon the trusts, terms and conditions, and for the uses hereinafter set forth.

The proceeds of the Sale shall after the Trustee retains his commission, together with reasonable attorneys fees incurred by the Trustee in such proceedings, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Note hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of **\$100.00** whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five per cent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (1/4) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (1/2) thereof after issuance of said notice, three-fourths (3/4) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And the said Grantor does hereby covenant and agree with the Trustee as follows:

1. **INSURANCE.** Grantor shall keep all improvements on said land, now or hereafter erected, constantly insured for the benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary. Grantor shall purchase such insurance, pay all premiums therefor, and shall deliver to Beneficiary such policies along with evidence of premium payments as long as the Note secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefor or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at his option, may purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the debt secured hereby and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. **TAXES, ASSESSMENTS, CHARGES.** Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises within thirty (30) days after the same shall become due. In the event that Grantor fails to so pay all taxes, assessments and charges as herein required, then Beneficiary, at his option, may pay the same and the amounts so paid shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary.

3. **ASSIGNMENTS OF RENTS AND PROFITS.** Grantor assigns to Beneficiary, in the event of default, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take possession of such land and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.

4. PARTIAL RELEASE. Grantor shall not be entitled to the partial release of any of the above described property unless a specific provision providing therefor is included in this Deed of Trust. In the event a partial release provision is included in this Deed of Trust, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, this Deed of Trust, and any other instrument that may be securing said Note.

5. WASTE. The Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements respecting the Premises or their use, and that he will not commit or permit any waste.

6. CONDEMNATION. In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Premises by Grantor.

7. WARRANTIES. Grantor covenants with Trustee and Beneficiary that he is seized of the Premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that he will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

8. SUBSTITUTION OF TRUSTEE. Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce his trust, or for any reason the holder of the Note desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

**X THE FOLLOWING PARAGRAPH, 9. SALE OF PREMISES, SHALL NOT APPLY UNLESS THE BLOCK TO THE LEFT MARGIN OF THIS SENTENCE IS MARKED AND/OR INITIALED.**

9. SALE OF PREMISES. The Project shall not be sold or transferred (other than Permitted Transfers, as defined in the Fifth Deed of Trust Loan Agreement) prior to repayment in full of the Loan without the prior written consent of the Lender, North Carolina Housing Finance Agency, and Limited Partner, which consent shall not be unreasonably withheld subject to all statutory and regulatory requirements and conditions applicable to transfer of the Project. Borrower agrees that the Lender shall not be deemed unreasonable in refusing to consent to the sale or transfer of the Project if (a) Borrower is in material default under this Agreement, or the Loan Documents and such default has continued beyond any applicable cure period; (b) the Lender reasonably determines that its security will be impaired as a result of such transfer or sale; (c) the Lender reasonably believes that the risk of breach of any covenant or agreement contained in the Loan Documents would be increased as a result of such sale or transfer; or (d) the Lender reasonably believes that the prospective transferee has insufficient experience or net worth to operate the Project in a manner satisfactory to the Lender. No such sale or transfer shall be effective until the transferee signs an assumption agreement that is acceptable to the Lender and that obligates the transferee to keep all the covenants and agreements contained in the Loan Documents, as modified as the Lender may reasonably require, subject to the non-recourse provisions of such Loan Documents. The parties agree that the Project's Reserve for Replacement account shall remain with the Project in the event of sale or transfer.

10. ADVANCEMENTS. If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Note secured hereby, the Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Note secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

11. INDEMNITY. If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Note secured hereby for sums due after default and shall be due and payable on demand.

12. WAIVERS. Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

13. CIVIL ACTION. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action and the reasonable attorney's fee of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Note secured by this Deed of Trust and bear interest at the rate provided in the Note for sums due after default.

14. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

15. OTHER TERMS.

See Exhibits B & C, attached hereto and incorporated by reference.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

\_\_\_\_\_  
(Entity Name) \_\_\_\_\_(SEAL)

By: \_\_\_\_\_  
Title: Executive Director \_\_\_\_\_(SEAL)

By: \_\_\_\_\_(SEAL)  
Title: \_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
Title: \_\_\_\_\_

State of North Carolina - County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

State of North Carolina - County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is the \_\_\_\_\_ of \_\_\_\_\_, a North Carolina or \_\_\_\_\_ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

State of North Carolina - County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that \_\_\_\_\_

Witness my hand and Notarial stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

The foregoing Certificate(s) of \_\_\_\_\_ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

\_\_\_\_\_ Register of Deeds for \_\_\_\_\_ County

By: \_\_\_\_\_ Deputy/Assistant - Register of Deeds

EXHIBIT A

## Legal Description

## EXHIBIT B

If the Grantor shall pay the Deed of Trust Note secured hereby in accordance with its terms and shall comply with all of the covenants, terms and conditions of this Deed of Trust and a Loan Agreement by and between the Grantor and Beneficiary, of even date herewith (hereinafter "Loan Agreement"), then this conveyance shall be null and void and may be canceled of record at the request of the grantor. If, however, there shall be any default in any of the covenants, terms or conditions contained herein, in the Loan Agreement, or in the Deed of Trust Note secured hereby, or in any subsequent instruments executed between the parties hereto, and such default is not cured within the period of time, if any, provided therefor in those instruments or otherwise specified in writing by the Beneficiary, then the remedies provided herein and in those instruments shall be available to the Trustee and Beneficiary. By way of illustration but not limitation, the Trustee is specifically authorized and empowered, upon request of the Beneficiary, to sell the Premises herein conveyed at public auction for cash, after having first given notice of hearing as to commencement of foreclosure proceedings and after having obtained such findings or leave of court as may be then required by law, and giving notice and advertising of the time and place of sale in such manner as may be then provided by law, and upon compliance with the law then relating to foreclosure proceedings under power of sale, to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings.

## EXHIBIT C

15. Wherever the term "Promissory Note" occurs in this document, it shall refer to the Fifth Deed of Trust Note between Grantor and Beneficiary of even date herewith.

16. Future Advances. This Deed of Trust is given to secure all present and future advances and re-advances by Beneficiary to Grantor, if any, and also to secure the performance and observation by Grantor of all of the other terms, covenants, conditions and agreements of this Deed of Trust, the Deed of Trust Note, the Loan Agreement and all other Loan documents, as the same from time to time may be modified and amended.

Future Advances shall include all amounts payable by Grantor to Beneficiary under the Loan documents, any fees or interest accruing under the Loan Agreement or Deed of Trust Note, and shall also include any amounts paid by the Trustee or the Beneficiary to protect or preserve the Premises or to protect, preserve, uphold and defend the lien of this Deed of Trust on the Premises, or for taxes, assessments or insurance premiums, or for performance of any of Grantor's obligations hereunder or under any of the other Loan documents, or for any other purpose provided herein or in the other Loan documents, whether or not the original Grantor remains the owner of the Premises at the time of such advance.

The amount of the present advance secured hereby is \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_) following the execution of this Deed of Trust; provided, however, that said period may be extended by Beneficiary up to, but not more than, two (2) years from the date hereof. The maximum principal amount, including present and future advances, which may be secured hereby at any one time is equal to the principal amount of Eight Hundred Thousand and No/100 Dollars (\$800,000.00); provided, however, that said maximum amount may be increased by such additional sums and amounts as may be advanced by Beneficiary pursuant to the provisions of this Deed of Trust, and all such expenditures for the protection of the security in accordance with the provisions of Section 45-70(c) of the General Statutes of North Carolina. The period within which the future advances may be made hereunder will expire two (2) years from the date hereof and shall be governed under the Loan Agreement.

17. Right to Enter and Take Possession. Subject to the rights of the First Deed of Trust, Second Deed of Trust, Third Deed of Trust and Fourth Deed of Trust Lenders, in the event of a Default, and in addition to, and not in limitation of, any and all rights or remedies available to the Trustee or Beneficiary as a result of any such Default either by law or by any other provision of this Deed of Trust or any of the other Loan documents, the Beneficiary, in its sole discretion, may elect to pursue the following remedy. Irrespective of whether Beneficiary accelerates the maturity of the indebtedness, the Beneficiary, or by such officers or agents as may be appointed for such purpose, may without notice, enter upon and take possession of the Premises or any part thereof, with or without the appointment of a receiver, or an application therefor, and may exclude Grantor and its agents and employees wholly therefrom, and may have joint access with Grantor to the books, papers, and accounts of Grantor. If Grantor shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by Beneficiary, Beneficiary may obtain a judgment or decree conferring upon Beneficiary the right to immediate possession or requiring Grantor to deliver immediate possession of the Premises to Beneficiary, and Grantor hereby specifically covenants and agrees that Grantor will not oppose, contest or otherwise hinder or delay Beneficiary in any action or proceeding by Beneficiary to obtain such judgment or decree. Grantor shall pay to the Beneficiary, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Beneficiary, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the indebtedness. Upon entering upon or taking of possession of the Premises, Beneficiary may hold, store, use and control the Premises and conduct the business thereof, and from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions,

betterment's and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all the rights and powers of Grantor to the same extent as Grantor could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Beneficiary, all as Beneficiary from time to time may determine to be in its best interest. Beneficiary may collect and receive all the income, rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and Beneficiary may apply any monies and proceeds received by Beneficiary, in whatever order or priority Beneficiary in its sole discretion may determine, to the payment of (i) all expenses of taking, holding, managing and operating the Premises (including, but not limited to, compensation for the services of all persons employed for such purposes); (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterment's, improvements, purchases and acquisitions; (iii) the cost of insurance; (iv) such taxes, assessments and other similar charges that Beneficiary may at its option pay; (v) other charges upon the Premises or any part thereof, (vi) the reasonable compensation, expenses and disbursements of the attorneys and agents of Beneficiary; (vii) accrued interest; (viii) deposits and other sums required to be paid under this Deed of Trust; or (ix) overdue installments of indebtedness. Beneficiary shall not be obligated to discharge or perform the duties of the landlord to any tenant or incur any liability as the result of any exercise by Beneficiary of its rights under this Deed of Trust, and the Trustee and Beneficiary shall be liable to account only for such rents, issues and profits, and other proceeds actually received by either of them.

18. Severability. If any provision of the Deed of Trust shall be held by a court of competent jurisdiction to be unconstitutional, invalid or unenforceable, the remainder of the provisions in this instrument shall continue in effect.

19. Permitted Encumbrances. This conveyance constitutes a Fifth Deed of Trust upon the real property described herein, and, if required by the First Deed of Trust, the Second Deed of Trust, the Third Deed of Trust or Fourth Deed of Trust, prior to the exercise of any rights by the Beneficiary hereunder or under the note secured hereby or to amendment of any of the terms hereof, the Beneficiary must obtain the prior written consent of the holder of the indebtedness secured by the First Deed of Trust, Second Deed of Trust, Third Deed of Trust and Fourth Deed of Trust. The Grantor and Beneficiary acknowledge that the Property is encumbered, as set forth on Exhibit D – Permitted Encumbrances attached hereto ("Permitted Exceptions"). Beneficiary, for itself and its successors and assigns, further covenants and agrees that in the event of the appointment of a receiver or of the appointment of the Beneficiary as mortgagee-in-possession, in any action by the Beneficiary, its successor or assigns to foreclose this mortgage, no rents, revenues or other income of the Project collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal or any other charges due and payable under this mortgage or the Note secured hereby, except from permitted distributions of Cash Flow Available for Subordinate Debt, if any, and from Net Proceeds and Condemnation Proceeds, as those terms are defined in the Loan Agreement; and further, the receiver or mortgagee-in-possession shall operate the project in accordance with all the provisions of the First Deed of Trust, Second Deed of Trust, Third Deed of Trust and Fourth Deed of Trust.

20. Incorporation. Notwithstanding anything to the contrary contained herein, Grantor shall have all of the notice and cure rights set forth in the Loan Agreement. Any notice of default shall be made to the persons and in the manner set forth in the Loan Agreement.

21. Non-Recourse. Except as provided in this section, neither the Grantor, any of the constituent general or limited partners of the Grantor, nor any of their officers or employees, shall have personal liability for any obligation under this Fifth Deed of Trust or other Loan Documents.

Without regard to and notwithstanding any contrary provisions which may be in the Loan Documents, the Grantor and its general partners shall be fully and personally liable, jointly and



severally, to the representative of the City and the City for any loss, cost, expense or liability of the City arising or resulting from:

- (a) any fraud or false representation by the Grantor, the General Partner or any Guarantor with regard to any matter relating to the Loan (as defined in the Loan Agreement) and the security therefor;
- (b) misappropriation or intentional misapplication of insurance or condemnation proceeds;
- (c) collection of rents for more than one month in advance or failure to apply rents to current maintenance, repairs and taxes while a Default exists under the Loan or any of the Loan Documents;
- (d) Grantor's failure to deliver security deposits of tenants to City following a Default, to the extent permitted by law;
- (e) permitting or suffering to occur any intentional waste of all or any portion of the Mortgaged Premises which results in loss or damage to the security of the Mortgaged Premises; and
- (f) The Grantor's failure to comply with completely with any representation, covenant, warranty or provision contained in the Loan Documents regarding environmental laws or hazardous, toxic or other environmentally regulated materials, wastes or substances, and the presence of hazardous, toxic, or other environmentally regulated materials wastes or substances on the Property, including but not limited to, the obligations, requirements and provisions set forth in the Deed of Trust, which results in loss or damage to the Mortgaged Premises.

22. Restoration. Subject to the rights of the holder of the First Deed of Trust, Second Deed of Trust, Third Deed of Trust and Fourth Deed of Trust, all or any loss proceeds payable to Beneficiary hereunder may, at Beneficiary's option, be applied in any one or more of the following ways: (a) applied to the indebtedness hereunder, (b) applied to fulfill any of the covenants of Grantor contained herein, (c) applied to the replacement or restoration of the premises, or (d) released to Grantor. Notwithstanding anything to the contrary contained herein, provided Grantor is not in default hereunder or under the Note or Loan Agreement, such insurance proceeds shall be used to restore or repair the premises, so long as Grantor, in its sole discretion, determined that it is feasible to do so, and so long as Grantor provides or causes to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration.

EXHIBIT D  
Permitted Exceptions